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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox

Addendum[*,**]

Mission to France

Summary

In the present report, submitted pursuant to Human Rights Council resolution 19/10, the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment sets out his findings and makes recommendations on the basis of his visit to France from 20 to 24 October 2014. During the visit, he examined how the country was implementing human rights relating to environmental protection, identified good practices and lessons learned, and considered the challenges the country faces in the implementation of environmentally related human rights.

[*] Late submission.

[**] The summary is being circulated in all official languages. The report itself, which is contained in the annex to the summary, is being circulated in the language of submission and in French only.

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Annex

[English and French only]

Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment on his mission to France (20–24 October 2014)

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I. Introduction

1. At the invitation of the Government, the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment visited France from 20 to 24 October 2014. The purpose of the visit was to examine how France is implementing human rights related to environmental protection, to identify good practices and lessons learned, and to consider any challenges the country is facing in this area.

2. The Independent Expert wishes to express his gratitude to the Government for its invitation and to express appreciation for the cooperation of officials at the Ministry of Foreign Affairs before and during the visit.

3. During his visit, the Independent Expert met with many government officials, including the Ambassador for Human Rights, Patrizianna Sparacino-Thiellay, the Ambassador for the Environment, Xavier Sticker, the Ambassador of Bioethics and Corporate Social Responsibility, Marine de Carné, and officials from the Ministry of Foreign Affairs and the Ministry of Ecology, Sustainable Development and Energy. He also met with Christian Leyrit, the President of the National Commission for Public Debate (Commission nationale du débat public) (CNDP), and representatives of the Economic, Social and Environmental Council, the French Development Agency (Agence française de développement) (AFD), Etalab, and the French national human rights commission. From the National Assembly, the Independent Expert met with Christophe Bouillon, the Vice-President of the Commission on Sustainable Development and Spatial Planning. Within the judicial branch, he met with Roland Peylet, the Deputy State Councillor and President of the Public Works Division of the Council of State (Conseil d'Etat). He also met with a range of representatives of civil society, including academics, representatives of non-profit groups, and trade union representatives. He thanks all those who met with him, gave their time and cooperated with him during the visit.

4. The Independent Expert regrets that, because of time limitations, he was not able to visit any overseas departments or territories. As a result, he will refrain from making observations or recommendations relating to conditions there. However, he notes the following recent United Nations reports on issues relating to human rights and the environment in French overseas departments and territories: the report of the Secretary-General on the environmental, ecological, health and other impacts of the 30-year period of nuclear testing in French Polynesia (A/69/189); and the report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, on the situation of Kanak people in New Caledonia, France (A/HRC/18/35/Add.6).

II. Legal and institutional frameworks

A. General framework

1. International law

5. France belongs to many international human rights treaties, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Therefore, it has undertaken obligations to protect a wide spectrum of human rights related to environmental protection. In 2014, the Parliament approved ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and the Government reports that it expects to deposit its instrument of ratification in the near future. France would be the most populous country yet

to ratify the Optional Protocol, which establishes a system of review of individual communications relating to the rights protected by the Covenant.

6. France is a party to the Convention for the Protection of Human Rights and Fundamental Freedoms and is subject to the jurisdiction of the European Court of Human Rights, which has developed a detailed jurisprudence relating human rights to environmental protection.[1] France is also a party to the European Social Charter of the Council of Europe, whose European Committee of Social Rights has interpreted the right to protection of health as including a right to a healthy environment.[2]

7. France is a party to a large number of environmental treaties, including the Vienna Convention for the Protection of the Ozone Layer, the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. France has also ratified the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) and the Convention on Environmental Impact Assessment in a Transboundary Context.

8. France is a member of the European Union, which has adopted environmental action plans and regulatory measures and harmonized national environmental measures. A significant portion of environmental legislation in France originates from European Union regulations, which apply to the entire European Union once adopted, and European Union directives, which member States implement through the adoption of appropriate national law.

9. Under article 55 of the French Constitution, duly approved treaties or agreements prevail over acts of Parliament, "subject, in regard to each agreement or treaty, to its application by the other party".

2. Constitutional and statutory law

10. The French legal system relies on codified law, and its legal order is based on a hierarchy of norms: each legal standard must comply with the standards at higher levels. The Constitution, which was adopted in 1958, is at the summit of the legal hierarchy. In addition to the text of the 1958 Constitution, the other instruments at the constitutional level are the 1789 Declaration of the Rights of Man and of the Citizen, the preamble to the 1946 Constitution and the 2005 Charter for the Environment.

11. The Constitution establishes executive, legislative and judicial branches. The executive branch is headed by the President, who appoints the Prime Minister. The Prime Minister is responsible, under the Constitution, for the execution of the laws. The President is elected for a five-year term, which may be renewed once. The legislative branch, or Parliament, has two chambers, the National Assembly and the Senate. The members of the National Assembly are directly elected; senators are chosen through election by local and other officials. The Constitution authorizes the President to dissolve the National Assembly and call for early elections.

12. The French judicial system has judicial courts and administrative courts. Judicial courts include civil courts that settle disputes between individuals, and criminal courts that

[1] See Report on European perspectives on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, available from http://ieenvironment.org/mapping-report-2014-2/; Council of Europe, *Manual on Human Rights and the Environment* (2012).

[2] *Marangopoulos Foundation for Human Rights v. Greece*, Complaint No. 30/2005, Decision on the merits (European Committee of Social Rights, 2006), para. 195.

impose penalties on those who have violated criminal law. The highest court on the judicial side is the Court of Cassation. Administrative courts review cases challenging government actions, and the Council of State acts as the highest administrative tribunal. The Council of State also advises the Government on proposed legislation.

13. Bills may be proposed by the executive branch or in either chamber of Parliament. After both chambers have approved a law, it may (and in some cases, must) be submitted to the Constitutional Council for a priori review. If the Council finds that the law is constitutional, it is promulgated by the President. In 2010, the Constitution was amended to authorize the Court of Cassation and the Council of State to ask the Constitutional Council to examine the constitutionality of a statutory provision if during judicial proceedings the provision is claimed to infringe the rights and freedoms guaranteed by the Constitution.[3] This *question prioritaire de constitutionnalité* (QPC) procedure allows the Constitutional Council to examine the constitutionality of laws (under certain circumstances) a posteriori—that is, after they take effect—in addition to the traditional a priori review.

B. Environmental framework

14. The current Environmental Code establishes a wide-ranging framework for the protection and management of the environment. It includes substantive and procedural provisions, and creates environmental institutions to implement its provisions. It provides for public participation, access to environmental information and environmental impact review (arts. L121-26); addresses pollution prevention, reparations, and civil and criminal sanctions (arts. L160-65); and sets out substantive environmental standards, including for the protection of air, water, natural spaces and flora and fauna (see chapter II, generally). The Code provides for penalties for violations. It also includes general principles, such as the precautionary principle, the polluter-pays principle, and principles of intra- and inter-generational equity.

15. French environmental law incorporates human rights in several respects. For example, the Environmental Code states that its laws and regulations "organize" the right to a healthy environment (art. L110-2). French statutes on water include a right of access to drinking water (laws 2006-172 and 2011-156). In addition, French law sets out rights of access to information, public participation in environmental decision-making, and access to justice in environmental matters. Most importantly, the Charter for the Environment, which was adopted in 2004 and took effect in 2005, incorporates a wide array of environmental rights and principles at the constitutional level. The Charter is discussed below, in section III.

16. The main environmental agency is the Ministry of Ecology, Sustainable Development and Energy, which is responsible for developing policy, drafting legislation and regulations, and overseeing the implementation and enforcement of environmental law. Environmental laws are enforced primarily by prefects, the representatives of the State in each department or region. The prefects issue environmental permits relating to "classified installations" — that is, industrial and other facilities that may affect the environment. The prefects also oversee compliance with legislative and regulatory standards. Prefects are supported by regional directorates of the environment, planning and housing.

17. Within the Parliament, the bodies most relevant to environmental issues include the Commission on Sustainable Development and Spatial Planning (in the National Assembly) and the Commission on Economy, Sustainable Development and Spatial Planning (in the Senate).

[3] Constitution, art. 61-1.

18. French courts play an active role in the implementation and oversight of environmental norms. The administrative courts have jurisdiction to review decisions of the Government relating to the environment, including decisions relating to permits for classified facilities. The Council of State regularly issues decisions in environmental cases, including, for example, quashing an authorization for a high-voltage power line that would have crossed a national park, enjoining the construction of a dam that would have placed endangered species at risk, and reviewing the proposed disposal of an aircraft carrier containing toxic materials.[4] Civil and criminal courts also hear environmental cases within their jurisdiction.

III. Environmental conditions in France

19. On the whole, France has a strong record of environmental protection. Nevertheless, it faces continuing challenges. Average ambient air quality has improved by 20 per cent since 1990, largely due to lower sulphur dioxide emissions, but health protection thresholds for certain pollutants (including ozone, fine particulates and nitrogen dioxide) were nevertheless exceeded in one out of ten measuring stations in 2011.[5] Water pollution from industrial discharges and urban wastewater treatment plants has decreased, but diffuse pollution from agricultural or transport-related sources remains problematic.[6]

20. France's surface and groundwater systems are particularly affected by agricultural-related pollution. According to the Government, in 2011 27 per cent of groundwater in metropolitan France had an average nitrate content of over 25 mg/l, with 11 per cent higher than 40 or even 50 mg/l.[7] Moreover, 93 per cent of the monitoring points in watercourses in metropolitan France and 85 per cent in overseas territories tested positive for pesticides in 2011, and many at high levels.[8] Between 1998 and 2008, some 900 water abstraction points intended for human consumption were abandoned because of nitrate and pesticide pollution from agricultural sources.

21. Unlike most countries in Europe, France has considerable habitat diversity: it has 131 of the 261 habitat types within the territory of the European Union identified as rare or in danger of disappearing. Moreover, because of its overseas territories and departments, France has within its jurisdiction parts of five different "hot spots" of global biodiversity (the Mediterranean basin, the Caribbean, the Indian Ocean, New Caledonia and Polynesia), as well as a part of one of the earth's three major forest zones (Amazonia).[9]

22. France has taken a number of actions to protect its natural sites and biodiversity. For example, the Natura 2000 network[10] covers 12.6 per cent of the territory as of 2013, and the coverage of waters by protected marine areas has gone from less than 0.1 per cent in 1980 to 2.4 per cent as of 2012.[11] But the Government reports that numerous species and

[4] David Marrani, "Human Rights and Environmental Protection: The Pressure of the Charter for the Environment on the French Administrative Courts", *Sustainable Development Law & Policy*, Fall 2009, pp.52-57 and 88.

[5] Ministry of Ecology, Sustainable Development and Energy, *L'environnement en France 2014*, p. 16, available from www.developpement-durable.gouv.fr/IMG/pdf/L_environnement_en_France_-_Edition_2014.pdf.

[6] Ministry of Ecology, Sustainable Development and Energy, *2014: The Environment in France, Major Trends*, pp. 9-10, available from www.developpement-durable.gouv.fr/The-environment-in-France-Major.html.

[7] Ibid., p. 9.

[8] Ibid., p. 10.

[9] European Environment Agency, *The European Environment: State and Outlook 2010, France*, available from www.eea.europa.eu/soer/countries/fr/soertopic_view?topic=biodiversity.

[10] Natura 2000 is a European Union-wide network of nature protection areas established under the 1992 Habitats Directive.

[11] Government of France, 2014 report on the environment, p. 15.

habitats—particularly coastal habitats—are in decline due to human activities: 54 per cent of species of community importance are in a poor state of conservation, as are 88 per cent of habitats on the Mediterranean coast.[12] Overseas territories also face problems relating to conservation. In Réunion, for example, a 2010 study by the French Committee of the International Union for Conservation of Nature indicated that one in five vertebrate and insect species, a third of the flora and 40 per cent of molluscs are threatened with extinction.[13]

23. France also faces grave threats from climate change. By the end of the century, temperatures are projected to increase by between 1.7°C and 5°C in metropolitan France, and between 1°C and 3°C in France's overseas territories.[14] A government report explains that "precipitation levels are expected to fall and water course flows could decrease by 20% to 30% on average by 2060. Heat waves would become more frequent and more intense. The rise in sea levels by the end of the century will probably be between 40 and 60 cm".[15] A 2009 government study analysing the impacts of climate change found that without adaptation measures, the impacts of coastal hazards through erosion and submersion from rising sea levels "will eventually concern several hundred thousand people and the destruction of housing will cost, for the Languedoc-Roussillon region alone, several tens of billion euro over a century".[16] Although France has reduced its emissions of greenhouse gases by 13 per cent since 1990, it has struggled to reduce emissions relating to transportation, the single largest sector responsible for emissions.[17]

IV. Good practices

24. In its resolution 19/10, the Human Rights Council decided to appoint an independent expert, whose tasks would include the following: to identify, promote and exchange views on best practices relating to the use of human rights obligations and commitments to inform, support and strengthen environmental policymaking, especially in the area of environmental protection, and, in that regard, to prepare a compendium of best practices. Generally, the Independent Expert prefers the term "good practice" to "best practice", because in many situations it is not possible to identify a single "best" approach. To be a good practice, the practice should integrate human rights principles and environmental standards in an exemplary manner. The term "practice" is defined broadly to include laws, policies, case law, jurisprudential shifts, strategies, administrative practices, projects and so forth.

25. France has many good practices in the use of human rights obligations in environmental policymaking, and this section describes only some of them. Specifically, it highlights good practices in four areas: (a) the incorporation of environmental rights and principles at the constitutional level; (b) the right to environmental information; (c) the right to public participation in environmental decision-making; and (d) international cooperation.

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[12] Ministry of Ecology, Sustainable Development and Energy, *2014: The Environment in France, Major Trends*, p. 19.

[13] Ibid., p.19.

[14] Ibid., p. 15.

[15] Ibid.

[16] Observatoire national sur les effets du réchauffement climatique (ONERC), Climate change: costs of impacts and lines of adaptation, 2009 Report to the Prime Minister and Parliament, English version available from: www.developpement-durable.gouv.fr/IMG/pdf/rapport_onerc_3_ENG_vf_2.pdf.

[17] Ministry of Ecology, Sustainable Development and Energy, *L'environnement en France*, Édition 2014, p. 16.

A. Charter for the Environment

26. The Charter for the Environment was adopted by the National Assembly in 2004 at the initiative of Jacques Chirac, the then President of France. In 2005, it took effect at the constitutional plane, with the same status as the 1789 Declaration of the Rights of Man and of the Citizen, and the preamble to the 1946 Constitution. France thus placed environmental rights and principles on the same level as the civil and political rights recognized by the 1789 Declaration and the economic, social and cultural rights set forth in the preamble to the 1946 Constitution.

27. Experts have identified many potential benefits of adopting environmental rights at the constitutional level, including that the recognition of such rights can lead to the enactment of stronger environmental laws, provide a safety net to protect against gaps in statutory environmental laws, raise the profile and importance of environmental protection as compared to competing interests such as economic development, and create opportunities for better access to justice and accountability.[18]

28. More than 90 States around the world now include environmental rights in their constitutions, and many others belong to regional instruments that recognize some form of a right to a healthy environment. However, very few States have adopted constitutional environmental provisions in as much detail and specificity as has France.

29. The first article of the Charter for the Environment states: "Each person has the right to live in a balanced environment which shows due respect for health". Article 7 of the Charter provides that "each person has the right, in the conditions and to the extent provided for by law, to have access to any information pertaining to the environment in the possession of public bodies and to participate in the public decision-making process likely to affect the environment".

30. In addition to these rights, the Charter also sets out obligations. Its second, third and fourth articles state that "each person has a duty to participate in preserving and enhancing the environment", that "each person shall, in the conditions provided for by law, foresee and avoid the occurrence of any damage which he or she may cause to the environment or, failing that, limit the consequences of such damage" and that "each person shall be required, in the conditions provided for by law, to contribute to the making good of any damage he or she may have caused to the environment".

31. While these obligations are set out in relation to "each person", the Charter also includes norms directed at the public authorities or the State as a whole. Article 5 incorporates the precautionary principle: "When the occurrence of any damage, albeit unpredictable in the current state of scientific knowledge, may seriously and irreversibly harm the environment, public authorities shall, with due respect for the principle of precaution and the areas within their jurisdiction, ensure the implementation of procedures for risk assessment and the adoption of temporary measures commensurate with the risk involved in order to deal with the occurrence of such damage."

32. Article 6 states: "Public policies shall promote sustainable development. To this end they shall reconcile the protection and enhancement of the environment with economic development and social progress." Articles 8 and 9 address environmental education and

[18] See the report on a regional consultation on constitutional environmental rights, held at Johannesburg, South Africa, on 23 and 24 January 2014, available from http://ieenvironment.org/2014/11/21/report-on-constitutional-environmental-rights. See also David R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (Vancouver, UBC Press, 2012) and James R. May and Erin Daly, *Global Environmental Constitutionalism* (New York, Cambridge University Press, 2014).

research. Article 10, the final provision, states: "This Charter shall inspire France's actions at both a European and an international level".

33. Both the Constitutional Council and the Council of State have emphasized that all of the rights and duties in the Charter have constitutional value.[19] In the context of a priori review, the Constitutional Council has applied the Charter to proposed laws before they take effect. In addition, it has applied certain provisions of the Charter through the a posteriori QPC procedure, according to which the constitutionality of a law may be referred to the Constitutional Council after the law has taken effect, during the course of litigation concerning the law.

34. By their terms, some provisions leave more discretion to the legislative and executive branches than others. For example, the Constitutional Council has stated that it is for Parliament to determine the manner in which article 6 of the Charter, on sustainable development, is to be implemented, in accordance with the article's "principle of reconciliation" between environmental protection and economic and social development.[20] The Council has also held that the QPC procedure, which is limited to issues concerning alleged infringements of rights and liberties, does not authorize review of the compatibility of laws with article 6.[21]

35. In construing articles 1 and 2 of the Charter, the Constitutional Council has stated that "every person is under an obligation to exercise care that no damage to the environment results from his actions; that the legislator is at liberty to determine the conditions under which an action for damages may be initiated due to the violation of this obligation; that, nevertheless, when exercising these powers, it may not limit the right to initiate damages actions under conditions which distort their scope".[22] The Council of State has also made clear that administrative courts may be asked to determine whether laws satisfy the right recognized in article 1.[23]

36. Plaintiffs have used the QPC process in a number of cases to obtain Constitutional Council review of their claims that the rights to information and participation set out in article 7 have been infringed. The Council has clarified that article 7 applies to decisions having a direct and significant effect on the environment.[24] And, in a series of decisions, the Council has held that laws providing for decisions that might have such an effect did not satisfy the requirements of article 7 because they did not adequately provide for public participation. They included laws that (a) provided for regulations governing the operation of facilities that might present environmental or other hazards;[25] (b) authorized exemptions to the general prohibition on taking wild animals or plants, or modifying their habitat;[26] and (c) provided for the delimitation of protection zones for feeder areas for drinking water intakes.[27]

37. In the listed cases, the Council deferred the effect of its declarations of unconstitutionality until the beginning of 2013. In December 2012, the Parliament adopted a new law, applicable to a wide range of decisions made by the Government, which sought to respond to the concerns raised before the Constitutional Council by ensuring that French

[19] Constitutional Council, Decision No. 2008-564 DC, 19 June 2008 ; Council of State, No. 297931, Commune d'Annecy, 3 October 2008.
[20] Decision No. 2013-666 DC, 11 April 2013, para. 39.
[21] Decisions No. 2013-346 QPC, 11 October 2013, para. 19; No. 2014-394 QPC, 7 May 2014, para. 6.
[22] Decision No. 2011-116 QPC, 8 April 2011, para. 5.
[23] Council of State, Decision No. 351514, 26 February 2014.
[24] E.g. Decision No. 2013-317 QPC, 24 May 2013, para. 7.
[25] Decision No. 2012-262 QPC, 13 July 2012.
[26] Decision No. 2012-269 QPC, 27 July 2012.
[27] Decision No. 2012-270 QPC, 27 July 2012.

law complies with the requirements of article 7 of the Charter.[28] Together with a legislative order of August 2013, the law now applies to all public decisions affecting the environment.

38. This development illustrates the value of constitutional rights relating to environmental protection and public participation. After the Constitutional Court applied article 7 of the Charter to hold that existing environmental laws did not adequately meet the requirements of public participation, the Parliament responded by strengthening the law.

39. The Charter thus not only symbolizes the importance France places upon environmental protection and emphasizes rights to a healthy environment, to environmental information and to public participation, as well as principles of precaution and sustainability, it also provides a basis for interpretation and application by government agencies and courts. As France continues to develop its jurisprudence based upon the Charter, its experience will be invaluable to other countries considering how best to use human rights in relation to environmental protection.

B. Right to information

40. Article 19 of the Universal Declaration of Human Rights recognizes that the right to freedom of opinion and expression includes the freedom "to seek, receive and impart information and ideas through any media and regardless of frontiers". The right to freedom of opinion and expression is further elaborated in article 19 of the International Covenant on Civil and Political Rights, as well as many other human rights instruments.

41. The significance of the right to information can apply with particular force in the environmental context because of the dangers posed to those unaware of potential environmental harm. For example, in *Guerra and others v. Italy*, the European Court of Human Rights held that the failure to provide "essential information that would have enabled [individuals living near the source of pollution] to assess the risks they and their families might run if they continued to live" in their homes, interfered with their right to respect for their private and family life, in violation of article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[29] Principle 10 of the 1992 Rio Declaration on Environment and Development states that "at the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities".

42. As noted above, since 2005 the Charter for the Environment has included a strong statement of a right to environmental information. In addition, France is a party to the Aarhus Convention, which requires each of its parties to possess and update environmental information, and to make such information available to its public.[30]

43. The French Environmental Code implements the right to access to information about the environment. In general, it provides that "any person" who requests information about the environment that is held by the State, local authorities or public establishments has a right to receive the information.[31] The law limits the grounds for rejection of a request, and requires any rejection to be notified to the requester "in writing, by means of a reasoned decision specifying the methods and deadlines for recourse".[32] The law also requires public authorities to take measures to enable the public to know about their right of access to

[28] Law No. 2012-1460.

[29] *Guerra and others v. Italy*, No. 116/1996/735/932, 19 February 1998.

[30] Aarhus Convention, arts. 4 and 5.

[31] Art. L124-3.

[32] Arts. L124-4, 124-5 and 124-6.

environmental information, and to make sure that the public can have access to the information sought. To this end, agencies are required to develop lists of categories of information about the environment in their possession, which indicate where the information is made available to the public.[33]

44. The Environmental Code includes more specific provisions on access to information in particular contexts, including the harmful effects on health and the environment of the collection and treatment of waste; the major risks from technological concerns and foreseeable natural disasters to which individuals are subject in specific geographical areas, and the measures taken to safeguard them; the effects on health and the environment of voluntary dissemination of genetically modified organisms; and air quality and its effects on health and the environment.[34]

45. In addition to these commitments, France has taken a number of innovative steps to provide environmental information to the public through online platforms. For example, the environmental ministry has established a website (www.toutsurlenvironnement.fr/), which includes thousands of documents relating to the environment, from the national Government, subnational and local governments, and other public entities. It allows users to search for information by key word, geographic area and theme. A criticism the Independent Expert heard, however, is that the website does not offer any feedback on comments made by the public.

46. More generally, France is pursuing a policy of open government through Etalab, a service created by the Prime Minister in 2011. Etalab has worked with other offices and with civil society to develop an online portal for open data (data.gouv.fr), which hosts datasets from a wide range of public services as well as datasets uploaded by civil society organizations, corporations and citizens. The portal has a section on housing, sustainable development and energy, which includes many different sets of data on environmental issues. Information about pollution and environmental quality available through the portal includes data on: pollutant emissions of vehicles sold in France; exposure of urban populations to fine particulate pollution; air quality in railway stations; the quality of water bodies in France; the amount of waste collected in Paris; and household energy prices, comparing fossil-fuel and sustainable sources. Etalab has also awarded funds to some projects to develop open data on environmental issues, including "piou piou", a sensor that allows people to track and share wind data.

C. Right to public participation

47. The baseline rights of everyone to take part in the government of their country and in the conduct of public affairs are recognized in the Universal Declaration of Human Rights (art. 21) and the International Covenant on Civil and Political Rights (art. 25), respectively. As the Independent Expert explained in his mapping report to the Human Rights Council, human rights bodies have built on this baseline in the environmental context, stating that States have a duty to facilitate public participation in environmental decision-making, which is necessary to safeguard a broad range of rights from environmental harm (A/HRC/25/53, para. 36).

48. Participation by relevant stakeholders, including civil society actors, helps to develop more effective and sustainable programmes, reduces exclusion and enhances accountability. As transparency is essential for meaningful participation, States are obliged to provide transparent processes and adequate information in accessible formats to enable people to participate fully in the review and refocusing of public policies, supported by

[33] Art. L124-7.

[34] Arts. L125-1, 125-2, 125-3 and 125-4.

legally binding and effective guarantees for a free press, freedom of expression and association, and the right to participate in public affairs.

49. As the above description of the Charter for the Environment explains, France has enshrined the right to participation in decisions affecting the environment at its constitutional level. It also protects public participation in environmental decision-making in many specific ways at the national and local levels. This section highlights its efforts to facilitate national discussions of important environmental topics.

50. During the course of the country visit, several examples were provided of France having carried out a broad public consultation in connection with its consideration of a new environmental policy. One important example is the Charter itself. In 2002, the drafting of the Charter was entrusted to a commission chaired by Yves Coppens. To aid the commission in its work and to enable broad public participation, a number of initiatives were conducted: a questionnaire was sent to 55,000 people; a dedicated website collected additional material; and 14 regional meetings were held that allowed some 8,000 people to participate. Members of the commission took part in the regional meetings and reported on them to the full group.[35] The process helped to inform the commission of the views of the public as it drafted the Charter, and it brought those views to the attention of the Parliament before and during its consideration of the Charter.

51. A more recent example is the public discussion of how France can undergo an "energy transition", which began in late 2012 and lasted eight months. It included an information phase, then a public participation phase with a dedicated website and regional consultations. In 2013, a national council with members of many different stakeholder groups, including civil society organizations, corporations, academic experts and trade unions, presented a synthesis of consensual elements to the Government. Drawing on this process, in 2014 the National Assembly adopted a new energy law to promote the more rapid development of renewable energy sources, including by providing for additional financial support and streamlining approval procedures for renewable energy projects, including onshore wind, small hydropower and biofuel projects.

52. In addition to these ad hoc methods of fostering public debate, France has established institutions that provide continuing methods of facilitating public input into the consideration of important issues, including environmental issues. For example, the Economic, Social and Environmental Council is a constitutional consultative assembly that promotes cooperation between different groups of stakeholders and ensures that their views are heard as part of the process of developing public policy. It promotes dialogue, helps to shape proposals and contributes to the review of public policy in these areas. The 233 members of the Council represent 18 groups, including environmental groups. The role of the Council includes advising the Government and the Parliament in the development of economic, social and environmental policies, and promoting dialogue between social and professional groups that may have different concerns, with the goal of shaping common proposals in the public interest.

53. Another institution of particular importance to environmental issues is the National Commission for Public Debate (CNDP), which organizes public debates on proposals for major development projects, such as the construction of nuclear reactors, railways, highways, natural gas pipelines, hydroelectric dams, sports stadiums and radioactive waste storage facilities.[36]

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[35] Dominique Bourg and Kerry H. Whiteside, "France's Charter for the Environment: of Presidents, Principles and Environmental Protection", in *Modern & Contemporary France*, vol. 15, issue 2, 2007, pp. 117–121.

[36] Information about the Commission is available from www.debatpublic.fr.

54. Created in 1995 by the "Barnier Law",[37] CNDP became an independent administrative authority in 2002. Its 25 members represent a wide range of stakeholders. They include one member of each house of Parliament, one member of the Council of State and one member of the Court of Cassation, six locally elected councillors, one representative of the court of auditors, one member of the administrative courts of appeal, two representatives of registered environmental protection associations, two representatives of consumers, two qualified government officials, two trade union representatives and two employer representatives. Members are appointed for five-year terms or for the term of their mandate, renewable only once.

55. Developers of projects worth more than €300 million are required to refer the proposals to the Commission. Projects from €150 million to €300 million in value may also be referred to the Commission. Upon receiving a referral, CNDP decides whether to organize a public debate. If it decides to do so, then it sets up a special ad hoc commission, which typically prepares six months in advance and then holds several public discussions over four months. At the end of the public debate, a report summarizing the debate is prepared. After the conclusion of every public debate, the developer informs CNDP of its decision and of any procedures for maintaining public participation in the next stages of the project. The Commission may express its views on these procedures and, at the request of the developer, appoint a guarantor to ensure that they are correctly followed.

56. When CNDP decides that a public debate is not warranted, it may nevertheless recommend that the developer organize a public consultation itself. Examples include a tram-train link in 2009, a new stadium at Roland Garros in 2012, and the closure of a waste storage facility in 2013. Such public consultations are usually overseen by a "guarantor" appointed by CNDP.

57. The "Grenelle 2" Law of 12 July 2010 established the position of "guarantor". In general, a guarantor is a person responsible for ensuring that consultation with the public is conducted fairly and appropriately. The roles of particular guarantors may vary. When a guarantor is engaged in a public consultation conducted by the developer of the project, he or she may play a more proactive role in organizing the consultation. But when a guarantor is appointed to oversee a post-debate process of continuing public consultation, the role may be closer to that of an observer or mediator. Either way, guarantors are to act as impartial, trusted facilitators of public participation.

58. Between 2002 and 2014, CNDP considered around 150 project submissions and organized 69 public debates, which involved 800 meetings with some 150,000 people. There were also 21 post-debate oversight proceedings and 45 recommended public consultations.

59. Although the CNDP does not have the authority to approve or deny the projects, the debates often have a significant effect. In roughly one third of the cases, the project is either abandoned or radically modified, and another one third undergo major changes. Only about one in three projects remains unchanged as a result of the public debate.

60. CNDP emphasizes that its objectives are to contribute to increasing public participation, to ensure that the public is heard throughout the decision-making process and to develop a culture of public debate generally. To these ends, CNDP operates in accordance with five core values: (a) independence (as noted previously, it is not under the control of the Government or the developers of the project); (b) neutrality (CNDP, its ad hoc commissions and its guarantors do not express an opinion for or against the proposed projects); (c) transparency (CNDP ensures that all data and studies related to the project under review are made publicly available); (d) equality of treatment (CNDP creates an environment of mutual respect and civility, in which all interested members of the public,

[37] Law No. 95-101, 2 February 1995.

regardless of their status or their view of the proposal, are able to express themselves freely); and (e) reasoned argument (CNDP places great value on promoting informed discussion, not simply polling the opinions of the participants).

61. Everyone with whom the Independent Expert spoke about how CNDP conducts public debates spoke highly of the manner in which the debates are carried out. The only criticism was that the process is not applied to more projects, a point discussed below in section V.

62. The Independent Expert agrees that CNDP is an example of good practice that should be studied by other countries. Such public debates are a valuable mechanism to enable citizens to have access to information and to participate in a robust discussion of policy options from early in the decision-making process.

D. International cooperation

63. France is engaged in several interesting and important projects of international cooperation. This section describes three, in particular: (a) the participation of France in the International Francophone Secretariat for Environmental Assessment (SIFÉE); (b) the actions of the French development agency, especially in connection with sustainable development; and (c) the role of France as the host of the 21st session of the Conference of the Parties to the Framework Convention on Climate Change.

1. International Francophone Secretariat for Environmental Assessment

64. SIFÉE is an international non-profit organization headquartered in Montreal, Canada.[38] Its mission is to promote environmental assessment in the francophone world by bringing together experts and policymakers from different regions in order to enable them share their experience with one another. The more than 3,000 participants include representatives of government agencies, national associations, local civil-society organizations, and educational and research institutions. In addition to the Government of France, its principal supporters are Quebec and the Francophone Institute for Sustainable Development, a subsidiary body of the International Organisation of la Francophonie.

65. SIFÉE undertakes various activities to strengthen the competence of practitioners and policymakers in the fields of environmental assessment, public participation and sustainable development. Its key activities are an annual international colloquium, a Summer School on Environmental Assessment, specialized training and the production and dissemination of publications.

66. The international colloquium brings together experts from a wide range of backgrounds, including government, academia and civil society, to share their experience in environmental assessment. Each year, the colloquium addresses a different theme and is held at a different location. In 2013, for example, the colloquium took place in Togo and focused on how to use environmental assessment as a tool for environmental disaster management and mitigation. The Summer School coincides with and takes place in the same location as the colloquium each year, and also addresses a specific theme.

2. French Development Agency

67. The French Development Agency (AFD) provides official development assistance to developing countries and to overseas departments within the jurisdiction of France. It provides project finance (mainly long-term financing) and assistance to recipients, including national and local governments, non-governmental organizations and private

[38] See www.sifee.org.

enterprises, with the goal of supporting projects that improve living conditions, promote economic growth and protect the planet.

68. In 2013, AFD committed some €7.8 billion for financing projects. For projects in the least-developed countries, principally in Sub-Saharan Africa, AFD mainly provides grants and subsidized loans, including for educational, health-related and small-scale agricultural projects.[39] In middle-income countries, it provides preferential loans and technical assistance, including for roads, ports and airports. In emerging market economies, it provides market-rate loans to finance projects that address climate change. In the French overseas departments and territories, it carries out a range of activities, including offering support, advice and finance. It also provides grants to help finance the work of some non-governmental organizations. Its subsidiary, PROPARCO, provides assistance to private enterprises.

69. AFD has made sustainable development the touchstone of its policies, and it tries to integrate sustainable development objectives into all of its operational strategies. More specifically, it supports a number of projects that are directly related to environmental protection. Examples of projects particularly relevant to the environment are: evaluating 11 pastoral water projects implemented in three regions of Chad, including their effects on the pastoral environment; together with Ziraat Bank, a State-owned Turkish bank, helping to finance capital investments for small and medium-sized food-processing operations to upgrade their facilities to meet European environmental regulations; providing India with a €110 million loan for a subway system in Bangalore that will mitigate carbon emissions from transportation; providing China with a €35 million loan to fund the rehabilitation of the world's largest cattail marsh, in the Shuangtai Estuary; providing €800 million to Indonesia to help counter climate-change-related disruption, including by designing a forest-management system, preserving peat bogs and developing renewable sources of energy; lending €100 million for wastewater collection and treatment systems in 12 cities in southern Brazil; and, in partnership with banks, providing nearly €15 million to finance a solar park in Guadeloupe.

70. More generally, AFD reports that the fight against climate change is one of its key objectives, to the extent that the agency has become one of the principal sources of international public finance for climate action. Over the period 2008-2011, it allocated an average of €2.2 billion annually for climate-related projects, and almost 50 per cent of its foreign assistance had climate-related benefits in 2013. It calculates that its newly funded projects in 2013 will help to mitigate climate change by abating nearly 3.3 million metric tons of carbon dioxide equivalent emissions of greenhouse gases each year. It has stated that it will continue to regard climate action as one of its top priorities for the next seven years, until the end of 2021.

71. Its action plan for the period 2012-2016 provides for it to continue to allocate 50 per cent of its financing to climate-related projects in developing countries. It also intends to systematically measure the carbon footprint of funded projects, using a transparent methodology.

72. In 2013, AFD amended its project review process to increase its emphasis on sustainable development. Its procedure for reviewing project proposals includes a feasibility study conducted by (or on behalf of) the project sponsor, which describes cost estimates and proposed financing for the project, as well as social and environmental impacts. ADP then examines this feasibility study in order, among other goals, to determine whether the project aligns with AFD and French development aid strategy and to consider the economic, social and environmental effects, including any related risks. Environmental

[39] The countries prioritized for such financial assistance are Benin, Burkina Faso, the Central African Republic, Chad, the Comoros, the Democratic Republic of the Congo, Djibouti, Ghana, Guinea, Madagascar, Mali, Mauritania, Niger, Senegal and Togo.

risks may concern the effects of pollution and the impact of the project on the health and living conditions of communities, as well as on their natural, historical and cultural heritage. Social risks concern respect for internationally recognized human rights, including in particular norms concerning human trafficking, sex tourism, population displacement, child labour, forced labour, the equitable treatment of women and disadvantaged or excluded social groups, and respect for cultural diversity.

73. At this stage, AFD obtains a second opinion on the financing application from an independent department. The purpose of the independent review is to provide an opinion separate and independent from that of the operational team directly involved with the proposal. Since 2013, this second opinion requires an analysis of the project's contribution to sustainable development.[40]

74. AFD has developed six criteria for assessing a project: (a) its economic effects, including its effects outside the immediate scope of the project; (b) its effects on social well-being and the reduction of social disequilibrium; (c) its relation to gender equality; (d) its effects on the conservation of biological diversity and natural resources; (e) the relation of the project to the fight against climate change, including with respect to mitigation, adaptation and public policy; and (f) the sustainability of the effects of the project, taking into account the governance framework surrounding it.

75. To assess these criteria, AFD uses a rating scale for each of these six dimensions, which ranges from -2 for very negative impacts to +1 for positive effects at the project level, to +3 for positive effects at a multisectoral level. The rating can evolve throughout the project cycle to reflect changes made as a result of the evaluation. The independent review may provide a favourable opinion of the project, an opinion that is favourable with recommendations for its improvement, or an opinion that is reserved, in the light of the project's consistency with the objectives of sustainable development, its ability to meet its goals, and its integration of elements of control of any environmental and social risks.

76. During the review of large projects, such as dams, there are opportunities for public input into the process. The project proponent must, in association with the local authorities, consult the communities affected and local civil-society organizations concerning the social and environmental effects of the project and the way in which the effects will be managed.

77. In addition, in some cases a grievance management mechanism must be established, to provide potentially affected communities an opportunity to raise complaints and concerns about the effects of the project. Such mechanisms must not limit the possibility for communities to have access to other avenues for remedies that exist in the country where the project is implemented. AFD does not, however, have an equivalent of the World Bank Inspection Panel, which allows affected individuals and communities to bring alleged violations of standards to the attention of the lender itself.

78. After the project is completed, AFD usually conducts a post-project performance evaluation, which includes an examination of its economic, social and environmental effects.

3. 21st session of the Conference of the Parties to the United Nations Framework Convention on Climate Change

79. From 30 November to 11 December 2015, France will host the 21st session of the Conference of the Parties (COP-21) to the United Nations Framework Convention on Climate Change, at which it is expected that a new agreement on climate change will be

[40] The AFD description of the criteria and the process is available from www.afd.fr/home/AFD/developpement-durable/DD-et-operations/Analyse-et-avis-developpement-durable.

adopted. On 10 December 2014, during the 20th session of the Conference of the Parties (COP-20), in Lima, the United Nations special procedures mandate holders issued a joint statement urging the States parties to the Convention to integrate human rights standards and principles in the climate change negotiations and in the agreement to be adopted in Paris. In that light, it is noteworthy that the Government of France has emphasized the importance of considering human rights in connection with climate change.

80. In November 2014, President François Hollande placed the fight against climate change in the context of human rights in his address to a multi-stakeholder environmental conference in Paris. He recalled that nearly 70 years previously, in December 1948, France had hosted the United Nations meeting to adopt the Universal Declaration of Human Rights, at the Palais de Chaillot. He stated, "Next year in Paris, France is going to host all of the countries of the world for a new stage of human rights. After the rights of the person, we will lay down the rights of humanity, that is to say the right for all the inhabitants of Earth to live in a world whose future is not compromised by the irresponsibility of the present".[41]

81. In addition, at COP-20 in Lima, Laurent Fabius, the Minister of Foreign Affairs and International Development, who will chair COP-21, emphasized that any discussion of climate change is also a discussion of human rights, because the poorest countries are not responsible for climate change but will suffer the largest climate disasters. He said that, as the host of COP-21, France will make sure that the next Human Rights Day, 10 December 2015, addresses human rights issues relating to climate change.

82. In preparation for COP-21, CNDP and its partners in other countries will host a public debate around the world, called "Worldwide views on climate and energy: a global citizen consultation." It is expected to involve 44 consultations in 38 countries. CNDP plans for the debate to take place throughout the day on 6 June 2015, starting in the Pacific region and ending on the west coast of the Americas. Some 4,000 participants will be invited to express their views on 30 questions, after having received informative material and participated in a debate with fellow citizens. The results, including a summary for policymakers, will be available online through a user-friendly interface and will be presented before and during COP-21.

V. Issues of concern

83. Although France has a strong environmental record in many respects, the Independent Expert also heard about areas of concern. In particular, he heard many expressions of dissatisfaction with the opportunities for public input into decisions about whether to approve smaller projects with environmental consequences—that is, projects too small to be subject to the public discussions overseen by CNDP. For these smaller projects, he heard that the decision-making process often takes too long and that decision makers provide access to the public too late in the process.

84. The public debates conducted by CNDP over proposals for very large projects received widespread praise. But it was pointed out that these debates cover only five to ten projects — albeit important ones — each year, and that thousands of smaller projects every year also have environmental consequences. For these projects, the usual review is a public inquiry (*enquête publique*), which occurs very late in the process.

[41] Text (in French) available from www.elysee.fr/declarations/article/discours-lors-de-la-conference-environnementale.

85. Michel Prieur, a widely recognized authority on French environmental law,[42] has written that "the main inconvenience of the current system is that it only allows the participation of the public at the end of the procedure, at a time when the applicant considers its project as a final project. Admittedly, the public authorities can obligate [the applicant] to modify its project after the public inquiry. But it would have been much better to plan an earlier participation of the public, when it is still possible to amend the project".[43] He notes that if the Government were "to announce in advance that a public authority or a company is preparing an impact assessment for such a project", then those concerned about its effects "would have time to seriously prepare a counter proposal and could, during the period before the public inquiry, start a dialogue with the applicant".[44]

86. The Independent Expert heard similar criticisms from many others during his visit. They emphasized that when the public inquiry takes place late in the decision-making process, alternatives no longer seem realistically available. As a result, stakeholders have a perception that the decision has already been effectively made, without adequate opportunities for public input.

87. He also heard that the decision-making process for new projects often takes too long, is too complicated and can be unpredictable. The Government shares these concerns, and it has established a working group for the modernization of environmental procedures (led by the Ministry for Ecology, Sustainable Development and Energy), which is examining, among other things, ways to simplify the decision-making process.

88. Simplification of decision-making processes is a legitimate goal. Nevertheless, the Independent Expert heard many statements to the effect that the working group should not roll back protections for public participation. He agrees that it is important to ensure that simplification does not come at the expense of public information and participation. The Government can and should simplify cumbersome procedures and make them more predictable and uniform, without transparency and public participation being decreased.

89. He welcomes the emphasis by Ségolène Royal, the Minister for Ecology, Sustainable Development and Energy, on the principle of non-regression in the protection of the environment and public rights. He strongly agrees that the working group on modernization should adhere to this principle and ensure that all efforts to improve and modernize the procedure by making it more streamlined and efficient do not regress to lower levels of protection for the environment and the rights to information and full and effective participation.

90. Moreover, the process of modernization should not just seek to avoid non-regression, but should actively look for ways to strengthen opportunities for public participation. The full public debate procedure overseen by CNDP may not be appropriate or workable for all of the thousands of decisions currently subject to public inquiry. But the CNDP experience does offer important lessons in conducting discussions that provide information, engage the public, and still result in effective decisions. And through the use and oversight of independent guarantors, CNDP is showing how an effective public consultation can occur for smaller projects as well. The Independent Expert encourages the working group on modernization and the Government to consider how to extend those lessons to decisions at the national and local levels. In addition, he notes that work under the Aarhus Convention also provides important guidance on how to ensure that environmental decisions meet the principles of public information and participation.

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[42] Michel Prieur is Professor Emeritus at the University of Limoges. Among many other positions, he served as president of the European Association of Environmental Law, and founded and edited the French Environmental Law Journal and the European Environmental Law Review (*Revue juridique de l'environnement* and *Revue européenne de droit de l'environnement*).

[43] Michel Prieur, *Droit de l'environnement*, 5th edition, Précis, Dalloz, 2004, p. 91.

[44] Ibid.

VI. Conclusions and recommendations

91. France provides many good examples of the application of human rights to environmental protection, including:

(a) The adoption of the Charter for the Environment at the constitutional level, including the adoption of the right of each person "to live in a balanced environment which shows due respect for health", the right of each person "to have access to any information pertaining to the environment in the possession of public bodies and to participate in the public decision-making process likely to affect the environment" and other norms, and the implementation of the Charter through legislation and judicial review;

(b) Innovative steps to provide environmental information to the public through online platforms, including a website maintained by the Ministry for Ecology, Sustainable Development and Energy, and the open data portal of Etalab;

(c) Broad national consultations on environmental issues of sweeping importance, including on the adoption of the Charter itself and, more recently, on a proposed "energy transition";

(d) The activities of the National Commission for Public Debate, which conducts transparent, inclusive, well-respected public discussions of proposals for major development projects;

(e) Support for the International Francophone Secretariat for Environmental Assessment, an international initiative that supports the exchange of information about environmental assessment in French-speaking countries;

(f) The emphasis on sustainable development in the French Development Agency, including through seeking independent assessment of proposed projects based on their compatibility with six criteria;

(g) In connection with its hosting of the 21st session of the Conference of Parties to the United Nations Convention on Climate Change, support for a human rights perspective on the effects of climate change, as well as the "global citizen consultation" on climate and energy to be conducted by the National Commission for Public Debate.

92. The Independent Expert commends France for these good practices, and encourages all States to give serious consideration to whether these good practices could also be useful for them.

93. Although France generally has a strong record of respect for human rights and environmental protection, the Independent Expert heard many expressions of dissatisfaction with the opportunities for public input into decisions whether to approve smaller projects with environmental consequences. These projects are typically subject to a "public inquiry" very late in the process, at a point when the decision appears to many observers to have been already made.

94. He also heard that the decision-making process for projects often takes too long, is too complicated and can be unpredictable, and that as a result, the Government has established a working group that is considering how to "modernize" environmental decision-making procedures.

95. There is nothing inherently wrong with trying to make decision-making less complex. But the Independent Expert emphasizes the importance of ensuring that simplification does not come at the expense of public information and participation. Efforts to modernize environmental decision-making must not lead to retrogression from existing safeguards for environmental protection and human rights. On the

contrary, modernization requires innovative thinking about ways to strengthen public participation in environmental decision-making.

96. **France is exhibiting such innovative thinking in many respects, including in the good practices noted above. The Independent Expert encourages it to bring the same approach to its examination of how to modernize decision-making for projects currently only within the scope of the public-inquiry process.**